

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN SENATE MAY 13, 2002

AMENDED IN SENATE MAY 2, 2002

SENATE BILL

No. 1955

Introduced by Senator Figueroa

(Coauthors: Senators Johannessen and Polanco)

(Coauthors: Assembly Members Aanestad, Correa, and Thomson)

February 22, 2002

An act to amend Sections 800, 805, 805.5, 1648.20, 2460, 2486, 2496, 2499.5, 2602, 2607.5, 2620.7, 2660, 2684, 3010, 3013, 3014.5, 3710, 3716, 3717, 3718, 3735.3, 3740, 3750.5, 3753.1, 3758.6, 3761, 3770, 3774, ~~and 3777~~ 3777, 18602, and 18613 of, to add Sections 2660.2, 2661.6, 3010.1, 3014.6, 3025.6, 3751.1, 3766, 3767, ~~and 3768~~ 3768, and 22253.5 to, and to repeal Sections 3712.5, 3750.6, and 3775.1 of, the Business and Professions Code, and to amend Section 123105 of the Health and Safety Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1955, as amended, Figueroa. Medical boards.

(1) *Existing law provides for the licensing and regulation of the practice of dentistry by the Dental Board of California. Existing law requires that a fact sheet be given to all patients prior to the performance of dental restoration work, except for any procedure where a patient does not have a structure or device placed in his or her mouth with the intent that it remain there indefinitely.*

This bill would instead apply the exemption only to a surgical, endodontic, periodontic, or orthodontic dental procedure meeting that requirement.

(2) Existing law provides for the licensure and regulation of podiatric medicine by the Board of Podiatric Medicine. Existing law terminates the existence of the board on July 1, 2003.

This bill would extend the existence of the board to July 1, 2007.

Existing law requires, for certification as a podiatrist, that an applicant meet specified examination requirements. Existing law also requires the board to impose specified continuing education requirements, including an examination requirement.

The bill would revise these examination requirements.

Existing law provides for a biennial certificate renewal fee of \$900 until January 1, 2004, and reduces the fee to \$800 as of that date.

This bill would continue the \$900 biennial certification renewal fee until January 1, 2006, and would reduce it to \$800 as of that date.

Moneys from these fees are deposited into the Contingent Fund of the Medical Board of California, which is a continuously appropriated fund. Because this bill would increase the amount of money deposited into this fund, it would make an appropriation.

~~(2)~~

(3) Existing law provides for the licensing and regulation of the practice of optometry by the State Board of Optometry and provides for the employment of an executive officer, as specified. The existence of the board and the executive officer will be terminated on July 1, 2003.

This bill would instead terminate the existence of the board and the executive officer on January 1, 2003, and, as of that date, would provide for the formation of a new board and employment of a new executive officer both of which would be terminated on July 1, 2005. The bill would grant the new board certain authority parallel with the authority of the previous board. The bill would also provide for the appointment and staggering of terms of board members, as specified.

The bill would authorize the board *to* adopt regulations clarifying the level of training and level of supervision of assistants to optometrists.

~~(3)~~

(4) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California and provides for the employment of an executive officer, as specified. The existence of the board and the executive officer will be terminated July 1, 2003.



This bill would extend the existence of the board and the executive officer to July 1, 2007.

Existing law authorizes the board or appointees of the board to inspect specified reports and records regarding respiratory care, treatment, services, or staff, and requires an employer to report specified employee information to the board.

This bill would revise the inspection requirements to include, in certain instances, copying records, and would provide that the failure to provide certain documents and records, as specified, is punishable by an administrative fine of up to \$10,000 per violation.

Moneys from these fines would be deposited into the Respiratory Care Fund, which is a continuously appropriated fund. Because this bill would increase the amount of money deposited into this fund, it would make an appropriation.

Existing law requires applicants for licensure to provide verification of, and to meet, specified education requirements, and requires respiratory therapy schools to meet certain requirements. Existing law prohibits certain fees imposed on respiratory therapy schools from exceeding specified limits.

This bill would revise the educational requirements. The bill would also revise the requirements for respiratory therapy schools, and would delete the maximum limit on the fees imposed on respiratory therapy schools.

Existing law authorizes the board to deny, suspend, or revoke the license of an applicant or licenseholder who has committed certain actions, including using alcoholic beverages in a dangerous or injurious manner, as specified.

This bill would require instead that, in order for the board to take this action with regard to alcohol use, the person have applied for employment or worked in any health care profession or environment while under the influence of alcohol.

Existing law authorizes a person whose license has been revoked or suspended, or who has been placed on probation to petition the board for reinstatement, modification, or termination of probation, if certain conditions are met.

This bill would authorize the holder of a conditional or probationary license issued prior to February 1, 2002, on specified grounds, to submit a petition to terminate probation prior to December 31, 2003.

Existing law authorizes an administrative disciplinary decision imposing terms of probation to require the licensee probationer pay the monetary costs associated with monitoring the probation.

This bill would prohibit the renewal or reinstatement of the license of a licensee who has failed to pay all of these costs once he or she has served the term of probation.

Existing law requires the board to punish a person representing himself as a respiratory care practitioner without a license by the issuance of a citation and the assessment of an administrative fine of \$1,000.

This bill would revise and expand this requirement. The board would authorize a person with a citation to appeal the board within a certain time period of service of the citation, and would provide procedures whereby a person could contest the citation.

Moneys from the fines are deposited into the Respiratory Care Fund, which is a continuously appropriated fund. Because this bill would increase and expand money derived from fines that is deposited into this fund, it would make an appropriation.

The bill would also make ~~technical~~ *nonsubstantive* changes to the provisions governing respiratory care practitioners and would delete an obsolete reporting requirement imposed on the board.

(4)

(5) Existing law provides for the licensure and regulation of physical therapists and physical therapy assistants by the Physical Therapy Board of California. The existence of the board would terminate July 1, 2003.

This bill would extend the existence of the board to July 1, 2007.

Existing law requires that to renew a license for the practice of physical therapy a licensee apply for renewal and pay a renewal fee, as specified.

This bill would require a licensee to disclose on the license renewal application any misdemeanor or other criminal offense for which he or she has been found guilty or to which he or she has pleaded guilty or no contest.

Existing law authorizes the Physical Therapy Board of California to conduct disciplinary proceedings against a licensee, including imposing probationary conditions, for specified causes.

This bill would require the board to establish a probation monitoring program. The bill would authorize the program to employ nonpeace



officer staff to perform its probation monitoring and would provide that the program be funded with moneys in the Physical Therapy Fund.

The Physical Therapy Fund is a continuously appropriated fund. Because funding this program would allow an existing appropriation to be made for a new purpose, it would make an appropriation.

This bill would authorize the board to refuse a license to an applicant guilty of specified unprofessional conduct or sexual activity, or issue the applicant a license subject to certain conditions. The bill would authorize the applicant to appeal the board's action.

Existing law provides for specified boards, not including the Physical Therapy Board of California, to keep certain records relating to unprofessional conduct, civil actions, and complaints against persons licensed or certified by the boards.

This bill would add the Physical Therapy Board of California to the list of boards to which these provisions apply.

Existing law, with regard to specified healing arts professionals, requires a peer review body and a chief executive officer or administrator of a licensed health care facility or clinic to file a peer review report with the relevant agency if an action of the peer review body adversely impacts a licensee's staff privileges or membership, as specified. Existing law requires a health facility, health care service plan, medical care foundation, or the medical staff of an institution, prior to granting or renewing staff privileges, to request a report from the appropriate agency to determine if a peer review report has been made. Failure to request a report is a crime and subjects a person to a fine.

This bill would add physical therapists to the list of licensees who are subject to these provisions and would thereby expand the number of people subject to the applicable fines.

Moneys from fines imposed are deposited into the Physical Therapy Fund, which is a continuously appropriated fund. Because this bill would increase the amount of moneys deposited into this fund, it would make an appropriation.

Because a violation of the requirement regarding requesting a peer review report would be a crime, this bill would create a state-mandated local program.

Existing law requires a physical therapist to document specified patient information.

This bill would additionally require a physical therapist to document the care actually provided and to legibly sign the patient record.



Existing law requires certain health care professionals to provide patient record access to patients, as specified.

This bill would add physical therapists to the list of health care professionals subject to this requirement.

Existing law provides the authority for the board to take disciplinary action for specified actions by a licensee.

This bill would characterize these acts as unprofessional conduct, would expand the acts, and would make both physical therapists and physical therapy assistants subject to disciplinary action for all of the acts listed.

~~(5)~~

(6) Existing law provides for the regulation of tax preparers and makes a violation of the provisions regulating tax preparers a crime. Existing law specifies that each violation of the provisions regulating the practice of tax preparers constitutes a separate offense.

This bill would require the Franchise Tax Board to enforce the provisions regulating tax preparers. The bill would authorize the board, in this regard, to cite a violating individual, levy a fine of up to \$1,000 per violation, and issue a cease and desist order. The bill would authorize the board to accept funds from the California Tax Education Council for the purpose of enforcing those provisions.

(7) The Boxing Act provides for the establishment of the State Athletic Commission within the Department of Consumer Affairs and makes the commission responsible for the regulation of boxing, kickboxing, and martial arts contests, matches, and exhibitions. Existing law authorizes the commission to appoint an executive officer. Under existing law, the provisions creating the commission will become inoperative on July 1, 2005, and to be repealed on January 1, 2006.

This bill would make nonsubstantive changes to these provisions.

(8) This bill would declare the intent of the Legislature, upon enactment of SB 2022 of the 2001-02 Regular Session, to pursue the creation of an independent board that would regulate the practice of dental hygienists.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature, upon the*
2 *enactment of Senate Bill 2022 of the 2001–02 Regular Session,*
3 *which will codify the scope of practice of dental hygienists, to*
4 *pursue the creation of an independent board that would regulate*
5 *the practice of dental hygienists.*

6 SEC. 2. Section 800 of the Business and Professions Code is
7 amended to read:

8 800. (a) The Medical Board of California, the Board of
9 Psychology, the Dental Board of California, the Osteopathic
10 Medical Board of California, the Board of Chiropractic
11 Examiners, the California Board of Registered Nursing, the Board
12 of Vocational Nursing and Psychiatric Technicians, the State
13 Board of Optometry, the Veterinary Medical Board, the Board of
14 Behavioral Sciences, the Physical Therapy Board of California,
15 and the State Board of Pharmacy shall each separately create and
16 maintain a central file of the names of all persons who hold a
17 license, certificate, or similar authority from that board. Each
18 central file shall be created and maintained to provide an
19 individual historical record for each licensee with respect to (1)
20 any conviction of a crime in this or any other state that constitutes
21 unprofessional conduct pursuant to the reporting requirements of
22 Section 803; (2) any judgment or settlement requiring the licensee
23 or his or her insurer, to pay any amount of damages in excess of
24 three thousand dollars (\$3,000) for any claim that injury or death
25 was proximately caused by the licensee's negligence, error or
26 omission in practice, or by rendering unauthorized professional
27 services, pursuant to the reporting requirements of Section 801 or
28 802; (3) any public complaints for which provision is hereinafter
29 made, pursuant to subdivision (b) of this section; (4) disciplinary
30 information reported pursuant to Section 805.

31 (b) Each board shall prescribe and promulgate forms on which
32 members of the public and other licensees or certificate holders
33 may file written complaints to the board alleging any act of
34 misconduct in, or connected with, the performance of professional
35 services by the licensee.

1 If a board, or division thereof, a committee, or a panel has failed
2 to act upon a complaint or report within five years, or has found
3 that the complaint or report is without merit, the central file shall
4 be purged of information relating to the complaint or report.

5 Notwithstanding this subdivision, the Board of Psychology, the
6 Board of Behavioral Sciences, and the Respiratory Care Board of
7 California shall maintain complaints or reports as long as each
8 board deems necessary.

9 (c) The contents of any central file which are not public records
10 under any other provision of law shall be confidential except that
11 the licensee involved, or his or her counsel or representative, shall
12 have the right to inspect and have copies made of his or her
13 complete file except for the provision that may disclose the
14 identity of an information source. For the purposes of this section,
15 a board may protect an information source by providing a copy of
16 the material with only those deletions necessary to protect the
17 identity of the source or by providing a comprehensive summary
18 of the substance of the material. Whichever method is used, the
19 board shall ensure that full disclosure is made to the subject of any
20 personal information that could reasonably in any way reflect or
21 convey anything detrimental, disparaging, or threatening to a
22 licensee's reputation, rights, benefits, privileges, or qualifications,
23 or be used by a board to make a determination that would affect a
24 licensee's rights, benefits, privileges, or qualifications.

25 The licensee may, but is not required to, submit any additional
26 exculpatory or explanatory statement or other information which
27 the board shall include in the central file.

28 Each board may permit any law enforcement or regulatory
29 agency when required for an investigation of unlawful activity or
30 for licensing, certification, or regulatory purposes to inspect and
31 have copies made of that licensee's file, unless the disclosure is
32 otherwise prohibited by law.

33 These disclosures shall effect no change in the confidential
34 status of these records.

35 ~~SEC. 2.~~

36 *SEC. 3.* Section 805 of the Business and Professions Code is
37 amended to read:

38 805. (a) As used in this section, the following terms have the
39 following definitions:

40 (1) "Peer review body" includes:

1 (A) A medical or professional staff of any health care facility
2 or clinic licensed under Division 2 (commencing with Section
3 1200) of the Health and Safety Code or of a facility certified to
4 participate in the federal Medicare program as an ambulatory
5 surgical center.

6 (B) A health care service plan registered under Chapter 2.2
7 (commencing with Section 1340) of Division 2 of the Health and
8 Safety Code or a disability insurer that contracts with licentiates
9 to provide services at alternative rates of payment pursuant to
10 Section 10133 of the Insurance Code.

11 (C) Any medical, psychological, marriage and family therapy,
12 social work, dental, physical therapy, or podiatric professional
13 society having as members at least 25 percent of the eligible
14 licentiates in the area in which it functions (which must include at
15 least one county), which is not organized for profit and which has
16 been determined to be exempt from taxes pursuant to Section
17 23701 of the Revenue and Taxation Code.

18 (D) A committee organized by any entity consisting of or
19 employing more than 25 licentiates of the same class that functions
20 for the purpose of reviewing the quality of professional care
21 provided by members or employees of that entity.

22 (2) “Licentiate” means a physician and surgeon, podiatrist,
23 clinical psychologist, marriage and family therapist, clinical social
24 worker, physical therapist, or dentist. “Licentiate” also includes
25 a person authorized to practice medicine pursuant to Section 2113.

26 (3) “Agency” means the relevant state licensing agency
27 having regulatory jurisdiction over the licentiates listed in
28 paragraph (2).

29 (4) “Staff privileges” means any arrangement under which a
30 licentiate is allowed to practice in or provide care for patients in
31 a health facility. Those arrangements shall include, but are not
32 limited to, full staff privileges, active staff privileges, limited staff
33 privileges, auxiliary staff privileges, provisional staff privileges,
34 temporary staff privileges, courtesy staff privileges, locum tenens
35 arrangements, and contractual arrangements to provide
36 professional services, including, but not limited to, arrangements
37 to provide outpatient services.

38 (5) “Denial or termination of staff privileges, membership, or
39 employment” includes failure or refusal to renew a contract or to

1 renew, extend, or reestablish any staff privileges, if the action is
2 based on medical disciplinary cause or reason.

3 (6) “Medical disciplinary cause or reason” means that aspect
4 of a licentiate’s competence or professional conduct which is
5 reasonably likely to be detrimental to patient safety or to the
6 delivery of patient care.

7 (7) “805 report” means the written report required under
8 subdivision (b).

9 (b) The chief of staff of a medical or professional staff or other
10 chief executive officer, medical director, or administrator of any
11 peer review body and the chief executive officer or administrator
12 of any licensed health care facility or clinic shall file an 805 report
13 with the relevant agency within 15 days after the effective date of
14 any of the following which take place as a result of an action of a
15 peer review body:

16 (1) A licentiate’s application for staff privileges or membership
17 is denied or rejected for a medical disciplinary cause or reason.

18 (2) A licentiate’s membership, staff privileges, or employment
19 is terminated or revoked for a medical disciplinary cause or reason.

20 (3) Restrictions are imposed, or voluntarily accepted, on staff
21 privileges, membership, or employment for a cumulative total of
22 30 days or more for any 12-month period, for a medical
23 disciplinary cause or reason.

24 (c) The chief of staff of a medical or professional staff or other
25 chief executive officer, medical director, or administrator of any
26 peer review body and the chief executive officer or administrator
27 of any licensed health care facility or clinic shall file an 805 report
28 with the relevant agency within 15 days after any of the following
29 takes place after notice of either an investigation or the impending
30 denial or rejection of the application for a medical disciplinary
31 cause or reason:

32 (1) Resignation or leave of absence from membership, staff, or
33 employment.

34 (2) The withdrawal or abandonment of a licentiate’s
35 application for staff privileges or membership.

36 (3) The request for renewal of those privileges or membership
37 is withdrawn or abandoned.

38 (d) For purposes of filing an 805 report, the signature of at least
39 one of the individuals indicated in subdivision (b) or (c) on the

1 completed form shall constitute compliance with the requirement
2 to file the report.

3 (e) An 805 report shall also be filed within 15 days following
4 the imposition of summary suspension of staff privileges,
5 membership, or employment, if the summary suspension remains
6 in effect for a period in excess of 14 days.

7 (f) A copy of the 805 report, and a notice advising the licentiate
8 of his or her right to submit additional statements or other
9 information pursuant to Section 800, shall be sent by the peer
10 review body to the licentiate named in the report.

11 The information to be reported in an 805 report shall include the
12 name and license number of the licentiate involved, a description
13 of the facts and circumstances of the medical disciplinary cause or
14 reason, and any other relevant information deemed appropriate by
15 the reporter.

16 A supplemental report shall also be made within 30 days
17 following the date the licentiate is deemed to have satisfied any
18 terms, conditions, or sanctions imposed as disciplinary action by
19 the reporting peer review body. In performing its dissemination
20 functions required by Section 805.5, the agency shall include a
21 copy of a supplemental report, if any, whenever it furnishes a copy
22 of the original 805 report.

23 If another peer review body is required to file an 805 report, a
24 health care service plan is not required to file a separate report with
25 respect to action attributable to the same medical disciplinary
26 cause or reason. If the Medical Board of California or a licensing
27 agency of another state revokes or suspends, without a stay, the
28 license of a physician, a peer review body is not required to file an
29 805 report when it takes an action as a result of the revocation or
30 suspension.

31 (g) The reporting required herein shall not act as a waiver of
32 confidentiality of medical records and committee reports. The
33 information reported or disclosed shall be kept confidential except
34 as provided in subdivision (c) of Section 800 and Sections 803.1
35 and 2027, provided that a copy of the report containing the
36 information required by this section may be disclosed as required
37 by Section 805.5 with respect to reports received on or after
38 January 1, 1976.

39 (h) The Medical Board of California, the Osteopathic Medical
40 Board of California, the Physical Therapy Board of California, and

1 the Dental Board of California shall disclose reports as required by
2 Section 805.5.

3 (i) An 805 report shall be maintained by an agency for
4 dissemination purposes for a period of three years after receipt.

5 (j) No person shall incur any civil or criminal liability as the
6 result of making any report required by this section.

7 (k) A willful failure to file an 805 report by any person who is
8 designated or otherwise required by law to file an 805 report is
9 punishable by a fine not to exceed one hundred thousand dollars
10 (\$100,000) per violation. The fine may be imposed in any civil or
11 administrative action or proceeding brought by or on behalf of any
12 agency having regulatory jurisdiction over the person regarding
13 whom the report was or should have been filed. If the person who
14 is designated or otherwise required to file an 805 report is a
15 licensed physician and surgeon, the action or proceeding shall be
16 brought by the Medical Board of California. The fine shall be paid
17 to that agency but not expended until appropriated by the
18 Legislature. A violation of this subdivision may constitute
19 unprofessional conduct by the licensee. A person who is alleged
20 to have violated this subdivision may assert any defense available
21 at law. As used in this subdivision, “willful” means a voluntary
22 and intentional violation of a known legal duty.

23 (l) Except as otherwise provided in subdivision (k), any failure
24 by the administrator of any peer review body, the chief executive
25 officer or administrator of any health care facility, or any person
26 who is designated or otherwise required by law to file an 805
27 report, shall be punishable by a fine that under no circumstances
28 shall exceed fifty thousand dollars (\$50,000) per violation. The
29 fine may be imposed in any civil or administrative action or
30 proceeding brought by or on behalf of any agency having
31 regulatory jurisdiction over the person regarding whom the report
32 was or should have been filed. If the person who is designated or
33 otherwise required to file an 805 report is a licensed physician and
34 surgeon, the action or proceeding shall be brought by the Medical
35 Board of California. The fine shall be paid to that agency but not
36 expended until appropriated by the Legislature. The amount of the
37 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
38 violation, shall be proportional to the severity of the failure to
39 report and shall differ based upon written findings, including
40 whether the failure to file caused harm to a patient or created a risk

to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

~~SEC. 3.~~

SEC. 4. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, physical therapist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, the Physical Therapy Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, physical therapist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, physical therapist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, or (3) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. In the event a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

In the event that the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, physical therapist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand two hundred dollars (\$1,200).

~~SEC. 4.~~

SEC. 5. Section 1648.20 of the Business and Professions Code is amended to read:

1648.20. (a) This article shall not apply to any ~~dental tool or instrument used during the dental procedure, but shall apply only to—~~ surgical, endodontic, periodontic, or orthodontic dental procedure in which dental restorative materials are not used.

(b) For purposes of this article, “dental restorative materials” means any structure or device placed into a patient’s mouth with the intent that it remain there *for an indefinite period* beyond the completion of the dental procedure, including, ~~but not limited to,~~ material used for filling cavities *in, or bracing teeth rebuilding or repairing the organic structure of, a tooth or teeth, but excluding*

1 *synthesized structures or devices intended to wholly replace an*
2 *extracted tooth or teeth, such as implants.*

3 *SEC. 6.* Section 2460 of the Business and Professions Code is
4 amended to read:

5 2460. There is created within the jurisdiction of the Medical
6 Board of California and its divisions the California Board of
7 Podiatric Medicine.

8 This section shall become inoperative on July 1, 2007, and, as
9 of January 1, 2008, is repealed, unless a later enacted statute,
10 which becomes effective on or before January 1, 2008, deletes or
11 extends the dates on which it becomes inoperative and is repealed.
12 The repeal of this section renders the California Board of Podiatric
13 Medicine subject to the review required by Division 1.2
14 (commencing with Section 473).

15 ~~SEC. 5.~~

16 *SEC. 7.* Section 2486 of the Business and Professions Code is
17 amended to read:

18 2486. The division shall issue, upon the recommendation of
19 the board, a certificate to practice podiatric medicine if the
20 applicant meets all of the following requirements:

21 (a) The applicant has graduated from an approved school or
22 college of podiatric medicine and meets the requirements of
23 Section 2483.

24 (b) The applicant, within the past 10 years, has passed parts I,
25 II, and III of the examination administered by the National Board
26 of Podiatric Medical Examiners of the United States or has passed
27 a written examination that is recognized by the board to be the
28 equivalent in content to the examination administered by the
29 National Board of Podiatric Medical Examiners of the United
30 States.

31 (c) The applicant has satisfactorily completed the postgraduate
32 training required by Section 2484.

33 (d) The applicant has passed within the past 10 years any oral
34 and practical examination that may be required of all applicants by
35 the board to ascertain clinical competence.

36 (e) The applicant has committed no acts or crimes constituting
37 grounds for denial of a certificate under Division 1.5
38 (commencing with Section 475).

39 (f) The board determines that no disciplinary action has been
40 taken against the applicant by any podiatric licensing authority and

1 that the applicant has not been the subject of adverse judgments or
2 settlements resulting from the practice of podiatric medicine that
3 the board determines constitutes evidence of a pattern of
4 negligence or incompetence.

5 ~~SEC. 6.~~

6 *SEC. 8.* Section 2496 of the Business and Professions Code is
7 amended to read:

8 2496. In order to ~~insure~~ *ensure* the continuing competence of
9 persons licensed to practice podiatric medicine, the board shall
10 adopt and administer regulations in accordance with the
11 Administrative Procedure Act (Chapter 3.5 (commencing with
12 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
13 Code) requiring continuing education of those licensees. The
14 board shall require those licensees to demonstrate satisfaction of
15 the continuing education requirements and one of the following
16 requirements at each license renewal:

17 (a) Passage of an examination administered by the board within
18 the past 10 years.

19 (b) Passage of an examination administered by an approved
20 specialty certifying board within the past 10 years.

21 (c) Current diplomate, board-eligible, or board-qualified status
22 granted by an approved specialty certifying board within the past
23 10 years.

24 (d) Recertification of current status by an approved specialty
25 certifying board within the past 10 years.

26 (e) Successful completion of an approved residency or
27 fellowship program within the past 10 years.

28 (f) Granting or renewal of current staff privileges within the
29 past five years by a health care facility that is licensed, certified,
30 accredited, conducted, maintained, operated, or otherwise
31 approved by an agency of the federal or state government or an
32 organization approved by the Medical Board of California.

33 (g) Successful completion of an approved course of study of at
34 least four weeks' duration at an approved school within the past
35 five years.

36 (h) Passage within the past 10 years of Part III of the
37 examination administered by the National Board of Podiatric
38 ~~Medicine Examiners of the United States.~~ *Medical Examiners.*

39 ~~SEC. 7.~~

1 *SEC. 9.* Section 2499.5 of the Business and Professions Code
2 is amended to read:

3 2499.5. The following fees apply to certificates to practice
4 podiatric medicine. The amount of fees prescribed for doctors of
5 podiatric medicine shall be those set forth in this section unless a
6 lower fee is established by the board in accordance with Section
7 2499.6. Fees collected pursuant to this section shall be fixed by the
8 board in amounts not to exceed the actual costs of providing the
9 service for which the fee is collected.

10 (a) Each applicant for a certificate to practice podiatric
11 medicine shall pay an application fee of twenty dollars (\$20) at the
12 time the application is filed. If the applicant qualifies for a
13 certificate, he or she shall pay a fee which shall be fixed by the
14 board at an amount not to exceed one hundred dollars (\$100) nor
15 less than five dollars (\$5) for the issuance of the certificate.

16 (b) The oral examination fee shall be seven hundred dollars
17 (\$700), or the actual cost, whichever is lower, and shall be paid by
18 each applicant. If the applicant's credentials are insufficient or if
19 the applicant does not desire to take the examination, and has so
20 notified the board 30 days prior to the examination date, only the
21 examination fee is returnable to the applicant. The board may
22 charge an examination fee for any subsequent reexamination of the
23 applicant.

24 (c) Each applicant who qualifies for a certificate, as a condition
25 precedent to its issuance, in addition to other fees required by this
26 section, shall pay an initial license fee. The initial license fee shall
27 be eight hundred dollars (\$800). The initial license shall expire the
28 second year after its issuance on the last day of the month of birth
29 of the licensee. The board may reduce the initial license fee by up
30 to 50 percent of the amount of the fee for any applicant who is
31 enrolled in a postgraduate training program approved by the board
32 or who has completed a postgraduate training program approved
33 by the board within six months prior to the payment of the initial
34 license fee.

35 (d) The biennial renewal fee shall be nine hundred dollars
36 (\$900). This fee shall remain in effect only until January 1, 2006,
37 and as of that date is reduced to eight hundred dollars (\$800),
38 unless a later enacted statute, that is enacted before January 1,
39 2006, deletes or extends that date. Any licensee enrolled in an
40 approved residency program shall be required to pay only 50

1 percent of the biennial renewal fee at the time of his or her first
2 renewal.

3 (e) The delinquency fee is one hundred fifty dollars (\$150).

4 (f) The duplicate wall certificate fee is forty dollars (\$40).

5 (g) The duplicate renewal receipt fee is forty dollars (\$40).

6 (h) The endorsement fee is thirty dollars (\$30).

7 (i) The letter of good standing fee or for loan deferment is thirty
8 dollars (\$30).

9 (j) There shall be a fee of sixty dollars (\$60) for the issuance of
10 a limited license under Section 2475.

11 (k) The application fee for certification under Section 2472
12 shall be fifty dollars (\$50). The examination and reexamination
13 fee for this certification shall be seven hundred dollars (\$700).

14 (l) The filing fee to appeal the failure of an oral examination
15 shall be twenty-five dollars (\$25).

16 (m) The fee for approval of a continuing education course or
17 program shall be one hundred dollars (\$100).

18 ~~SEC. 8.~~

19 *SEC. 10.* Section 2602 of the Business and Professions Code
20 is amended to read:

21 2602. The Physical Therapy Board of California, hereafter
22 referred to as the board, shall enforce and administer this chapter.

23 This section shall become inoperative on July 1, 2007, and, as
24 of January 1, 2008, is repealed, unless a later enacted statute,
25 which becomes effective on or before January 1, 2008, deletes or
26 extends the dates on which it becomes inoperative and is repealed.

27 The repeal of this section renders the board subject to the review
28 required by Division 1.2 (commencing with Section 473).

29 ~~SEC. 9.~~

30 *SEC. 11.* Section 2607.5 of the Business and Professions Code
31 is amended to read:

32 2607.5. The board may appoint a person exempt from civil
33 service who shall be designated as an executive officer and who
34 shall exercise the powers and perform the duties delegated by the
35 board and vested in him or her by this chapter.

36 This section shall become inoperative on July 1, 2007, and, as
37 of January 1, 2008, is repealed, unless a later enacted statute,
38 which becomes effective on or before January 1, 2008, deletes or
39 extends the dates on which it becomes inoperative and is repealed.

1 The repeal of this section renders the board subject to the review
2 required by Division 1.2 (commencing with Section 473).

3 ~~SEC. 10.~~

4 *SEC. 12.* Section 2620.7 of the Business and Professions
5 Code is amended to read:

6 2620.7. (a) A physical therapist shall document his or her
7 evaluation, goals, treatment plan, and summary of treatment in the
8 patient record.

9 (b) A physical therapist shall document the care actually
10 provided to a patient in the patient record.

11 (c) A physical therapist shall sign the patient record legibly.

12 (d) Patient records shall be maintained for a period of no less
13 than seven years following the discharge of the patient, except that
14 the records of unemancipated minors shall be maintained at least
15 one year after the minor has reached the age of 18 years, and not
16 in any case less than seven years.

17 ~~SEC. 11.~~

18 *SEC. 13.* Section 2660 of the Business and Professions Code
19 is amended to read:

20 2660. The board may, after the conduct of appropriate
21 proceedings under the Administrative Procedure Act, suspend for
22 not more than 12 months, or revoke, or impose probationary
23 conditions upon, ~~or issue subject to terms and conditions~~ any
24 license, certificate, or approval issued under this chapter for
25 unprofessional conduct, ~~including, but that includes, but is not~~
26 limited to, *one or any combination of the following causes:*

27 (a) Advertising in violation of Section 17500.

28 (b) Fraud in the procurement of any license under this chapter.

29 (c) Procuring or aiding or offering to procure or aid in criminal
30 abortion.

31 (d) Conviction of a crime which substantially relates to the
32 qualifications, functions, or duties of a physical therapist or
33 physical therapy assistant. The record of conviction or a certified
34 copy thereof shall be conclusive evidence of that conviction.

35 (e) Impersonating or acting as a proxy for an applicant in any
36 examination given under this chapter.

37 (f) Habitual intemperance.

38 (g) Addiction to the excessive use of any habit-forming drug.

39 (h) Gross negligence in his or her practice as a physical
40 therapist or physical therapy assistant.

1 (i) Conviction of a violation of any of the provisions of this
2 chapter or of the State Medical Practice Act, or violating, or
3 attempting to violate, directly or indirectly, or assisting in or
4 abetting the violating of, or conspiring to violate any provision or
5 term of this chapter or of the State Medical Practice Act.

6 (j) The aiding or abetting of any person to violate this chapter
7 or any regulations duly adopted under this chapter.

8 (k) The aiding or abetting of any person to engage in the
9 unlawful practice of physical therapy.

10 (l) The commission of any fraudulent, dishonest, or corrupt act
11 which is substantially related to the qualifications, functions, or
12 duties of a physical therapist or physical therapy assistant.

13 (m) Except for good cause, the knowing failure to protect
14 patients by failing to follow infection control guidelines of the
15 board, thereby risking transmission of blood-borne infectious
16 diseases from licensee to patient, from patient to patient, and from
17 patient to licensee. In administering this subdivision, the board
18 shall consider referencing the standards, regulations, and
19 guidelines of the State Department of Health Services developed
20 pursuant to Section 1250.11 of the Health and Safety Code and the
21 standards, regulations, and guidelines pursuant to the California
22 Occupational Safety and Health Act of 1973 (Part 1 (commencing
23 with Section 6300) of Division 5 of the Labor Code) for preventing
24 the transmission of HIV, hepatitis B, and other blood-borne
25 pathogens in health care settings. As necessary, the board shall
26 consult with the Medical Board of California, the California Board
27 of Podiatric Medicine, the Board of Dental Examiners of
28 California, the Board of Registered Nursing, and the Board of
29 Vocational Nursing and Psychiatric Technicians, to encourage
30 appropriate consistency in the implementation of this subdivision.

31 The board shall seek to ensure that licensees are informed of the
32 responsibility of licensees and others to follow infection control
33 guidelines, and of the most recent scientifically recognized
34 safeguards for minimizing the risk of transmission of blood-borne
35 infectious diseases.

36 (n) The commission of verbal abuse or sexual harassment.

37 ~~SEC. 12.~~

38 *SEC. 14. Section 2660.2 is added to the Business and*
39 *Professions Code, to read:*

1 2660.2. (a) *The board may refuse a license to any applicant*
2 *guilty of unprofessional conduct or sexual activity referred to in*
3 *Section 2660.1. The board may, in its sole discretion, issue a*
4 *probationary license to any applicant for a license who is guilty of*
5 *unprofessional conduct but who has met all other requirements for*
6 *licensure. The board may issue the license subject to any terms or*
7 *conditions not contrary to public policy, including, but not limited*
8 *to, the following:*

- 9 (1) *Medical or psychiatric evaluation.*
10 (2) *Continuing medical or psychiatric treatment.*
11 (3) *Restriction of the type or circumstances of practice.*
12 (4) *Continuing participation in a board-approved*
13 *rehabilitation program.*
14 (5) *Abstention from the use of alcohol or drugs.*
15 (6) *Random fluid testing for alcohol or drugs.*
16 (7) *Compliance with laws and regulations governing the*
17 *practice of physical therapy.*

18 (b) *The applicant shall have the right to appeal the denial, or*
19 *the issuance with terms and conditions, of any license in*
20 *accordance with Chapter 5 (commencing with Section 11500) of*
21 *Part 1 of Division 3 of Title 2 of the Government Code, and the*
22 *board shall have all the powers granted therein. The action shall*
23 *be final, except that the propriety of the action is subject to review*
24 *by the superior court pursuant to Section 1094.5 of the Code of*
25 *Civil Procedure.*

26 SEC. 15. *Section 2661.6 is added to the Business and*
27 *Professions Code, to read:*

28 2661.6. (a) *The board shall establish a probation monitoring*
29 *program to monitor probationary licenses.*

30 (b) *The program may employ nonpeace officer staff to perform*
31 *its probation monitoring.*

32 (c) *The program shall be funded with moneys in the Physical*
33 *Therapy Fund.*

34 SEC. 16. *Section 2684 of the Business and Professions Code*
35 *is amended to read:*

36 2684. (a) *Notwithstanding Section 2422, any license or*
37 *approval for the practice of physical therapy shall expire at 12*
38 *midnight on the last day of the birth month of the licensee or holder*
39 *of the approval during the second year of a two-year term, if not*
40 *renewed.*

(b) To renew an unexpired license or approval, the licensee or the holder of the approval shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee. *The licensee shall disclose on his or her license renewal application any misdemeanor or other criminal offense for which he or she has been found guilty or to which he or she has pleaded guilty or no contest.*

(c) A license that has expired may be renewed within five years upon payment of all accrued and unpaid renewal fees.

SEC. 17. Section 3010 of the Business and Professions Code is amended to read:

3010. There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of nine members, three of whom shall be public members.

Six members of the board shall constitute a quorum.

This section shall remain in effect only until January 1, 2003, and, as of that date, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2003, deletes or extends that date.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

~~SEC. 13.~~

SEC. 18. Section 3010.1 is added to the Business and Professions Code, to read:

3010.1. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until July 1, 2005, and, as of that date, is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

~~SEC. 14.~~

1 *SEC. 19.* Section 3013 of the Business and Professions Code
2 is amended to read:

3 3013. (a) Each member of the board shall hold office for a
4 term of four years, and shall serve until the appointment and
5 qualification of his or her successor or until one year shall have
6 elapsed since the expiration of the term for which he or she was
7 appointed, whichever first occurs.

8 (b) Vacancies occurring shall be filled by appointment for the
9 unexpired term.

10 (c) The Governor shall appoint three of the public members and
11 the six members qualified as provided in Section 3011. The Senate
12 Rules Committee and the Speaker of the Assembly shall each
13 appoint a public member, and their initial appointment shall be
14 made to fill, respectively, the first and second public member
15 vacancies which occur on or after January 1, 1983.

16 (d) No board member serving between January 1, 2000, and
17 June 1, 2002, inclusive, shall be eligible for reappointment.

18 (e) For initial appointments made on or after January 1, 2003,
19 one of the public members appointed by the Governor and two of
20 the professional members shall serve terms of one year. One of the
21 public members appointed by the Governor and two of the
22 professional members shall serve terms of three years. The
23 remaining public member appointed by the Governor and *the*
24 *remaining* two professional members shall serve terms of four
25 years. The public members appointed by the Senate Committee on
26 Rules and the Speaker of the Assembly shall each serve for a term
27 of four years.

28 ~~SEC. 15.~~

29 *SEC. 20.* Section 3014.5 of the Business and Professions
30 Code is amended to read:

31 3014.5. The board may appoint a person exempt from civil
32 service who shall be designated as an executive officer and who
33 shall exercise the powers and perform the duties delegated by the
34 board and vested in him or her by this chapter.

35 This section shall remain in effect only until January 1, 2003,
36 and, as of that date, is repealed, unless a later enacted statute, that
37 becomes effective on or before January 1, 2003, deletes or extends
38 that date.

39 The repeal of this section renders the board subject to the review
40 required by Division 1.2 (commencing with Section 473).

1 ~~SEC. 16.~~

2 *SEC. 21.* Section 3014.6 is added to the Business and
3 Professions Code, to read:

4 3014.6. (a) The board may appoint a person exempt from
5 civil service who shall be designated as an executive officer and
6 who shall exercise the powers and perform the duties delegated by
7 the board and vested in him or her by this chapter.

8 (b) This section *shall* become inoperative on July 1, 2005, and,
9 as of January 1, 2006, is repealed, unless a later enacted statute,
10 that is enacted before January 1, 2006, deletes or extends the dates
11 on which it becomes inoperative and is repealed.

12 ~~SEC. 17.~~

13 *SEC. 22.* Section 3025.6 is added to the Business and
14 Professions Code, to read:

15 3025.6. The board may adopt ~~regulation~~ *regulations*
16 clarifying the level of training and the level of supervision of
17 assistants.

18 ~~SEC. 18.~~

19 *SEC. 23.* Section 3710 of the Business and Professions Code
20 is amended to read:

21 3710. The Respiratory Care Board of California, hereafter
22 referred to as the board, shall enforce and administer this chapter.

23 This section shall become inoperative on July 1, 2007, and, as
24 of January 1, 2008, is repealed, unless a later enacted statute, that
25 becomes operative on or before January 1, 2008, deletes or extends
26 the dates on which it becomes inoperative and is repealed.

27 The repeal of this section renders the board subject to the review
28 required by Division 1.2 (commencing with Section 473).

29 ~~SEC. 19.~~

30 *SEC. 24.* Section 3712.5 of the Business and Professions
31 Code is repealed.

32 ~~SEC. 20.~~

33 *SEC. 25.* Section 3716 of the Business and Professions Code
34 is amended to read:

35 3716. The board may employ an executive officer exempt
36 from civil service and, subject to the provisions of law relating to
37 civil service, clerical assistants and, except as provided in Section
38 159.5, other employees as it may deem necessary to carry out its
39 powers and duties.

1 This section shall become inoperative on July 1, 2007, and, as
2 of January 1, 2008, is repealed, unless a later enacted statute, that
3 becomes operative on or before January 1, 2008, deletes or extends
4 the dates on which it becomes inoperative and is repealed.

5 The repeal of this section renders the board subject to the review
6 required by Division 1.2 (commencing with Section 473).

7 ~~SEC. 21.~~

8 *SEC. 26.* Section 3717 of the Business and Professions Code
9 is amended to read:

10 3717. (a) The board, or any licensed respiratory care
11 practitioner, enforcement staff, or investigative unit appointed by
12 the board, may inspect, or require reports from, a general or
13 specialized hospital or any other facility or corporation providing
14 respiratory care, treatment, or services and the respiratory care
15 staff thereof, with respect to the respiratory care, treatment,
16 services, or facilities provided therein, or the employment of staff
17 providing the respiratory care, treatment, or services, and may
18 inspect and copy respiratory care patient records with respect to
19 that care, treatment, services, or facilities. The authority to make
20 inspections and to require reports as provided by this section is
21 subject to the restrictions against disclosure contained in Section
22 2225. Those persons may also inspect and copy employment
23 records relevant to an official investigation provided that the
24 written request to inspect the records specifies the portion of the
25 records to be inspected.

26 (b) The failure of an employer to provide documents as
27 required by this section is punishable by an administrative fine not
28 to exceed ten thousand dollars (\$10,000) per violation. This
29 penalty shall be in addition to, and not in lieu of, any other civil or
30 criminal remedies.

31 ~~SEC. 22.~~

32 *SEC. 27.* Section 3718 of the Business and Professions Code
33 is amended to read:

34 3718. The board shall issue, deny, suspend, and revoke
35 licenses to practice respiratory care as provided in this chapter.

36 ~~SEC. 23.~~

37 *SEC. 28.* Section 3735.3 of the Business and Professions
38 Code is amended to read:

39 3735.3. An applicant for a license as a respiratory care
40 practitioner may not be scheduled to sit for the examination until

1 verification from the program director, in a form acceptable to the
2 board, declaring that the applicant has completed his or her
3 respiratory training program and has met all the educational
4 requirements for the awarding of an associate degree is received
5 in the board's office. An official transcript from the educational
6 institution's registrar's office shall be submitted to the board prior
7 to the issuance of a license as a respiratory care practitioner.

8 ~~SEC. 24.~~

9 *SEC. 29.* Section 3740 of the Business and Professions Code
10 is amended to read:

11 3740. (a) Except as otherwise provided in this chapter, all
12 applicants for licensure under this chapter shall have completed a
13 board approved respiratory care program and been awarded a
14 minimum of an associate degree.

15 (b) Notwithstanding subdivision (a), meeting the following
16 qualifications shall be deemed equivalent to the required
17 education:

18 (1) Enrollment in an approved baccalaureate degree program.

19 (2) Completion of science, general academic, and respiratory
20 therapy course work commensurate with the requirements for an
21 associate degree in subdivision (a).

22 (c) An applicant whose application is based on a diploma
23 issued to the applicant by a foreign respiratory therapy school or
24 a certificate or license issued by another state, district, or territory
25 of the United States, shall furnish documentary evidence,
26 satisfactory to the board, that he or she has completed a respiratory
27 therapy school or a course of professional instruction equivalent
28 to that required in subdivision (a), for a respiratory care
29 practitioner applicant.

30 (d) Education programs for respiratory care that are accredited
31 programs in public or private postsecondary education institutions
32 or universities accredited by a regional accreditation agency or
33 association recognized by the United States Department of
34 Education and the Commission on Accreditation of Allied Health
35 Education Programs, as verified by the board biannually, may be
36 considered approved programs by the board unless the board
37 determines otherwise.

38 (e) A school shall give the director of a respiratory care
39 program adequate release time to perform his or her administrative

1 duties consistent with the established policies of the educational
2 institution.

3 (f) Satisfactory evidence as to educational qualifications shall
4 take the form of certified transcripts of the applicant's college
5 record mailed directly to the board from the educational
6 institution. However, the board may require an evaluation of
7 educational credentials by an evaluation service approved by the
8 board.

9 (g) At the board's discretion, it may waive its educational
10 requirements if evidence is presented and the board deems it as
11 meeting the current ~~education~~ *educational* requirements that will
12 ensure the safe and competent practice of respiratory care. This
13 evidence may include, but is not limited to:

14 (1) Work experience.

15 (2) Good standing of licensure in another state.

16 (3) Previous good standing of licensure in the State of
17 California.

18 (h) Nothing contained in this section shall prohibit the board
19 from disapproving any respiratory therapy school, nor from
20 denying the applicant if the instruction received by the applicant
21 or the courses were not equivalent to that required by the board.

22 ~~SEC. 25.~~

23 *SEC. 30.* Section 3750.5 of the Business and Professions
24 Code is amended to read:

25 3750.5. In addition to any other grounds specified in this
26 chapter, the board may deny, suspend, or revoke the license of any
27 applicant or licenseholder who has done any of the following:

28 (a) Obtained or possessed in violation of law, or except as
29 directed by a licensed physician and surgeon, dentist, or podiatrist
30 administered to himself or herself, or furnished or administered to
31 another, any controlled substances as defined in Division 10
32 (commencing with Section 11000) of the Health and Safety Code,
33 or any dangerous drug as defined in Article 7 (commencing with
34 Section 4210) of Chapter 9 of this code.

35 (b) Used any controlled substance as defined in Division 10
36 (commencing with Section 11000) of the Health and Safety Code,
37 or any dangerous drug as defined in Article 7 (commencing with
38 Section 4210) of Chapter 9 of this code.

39 (c) Applied for employment or worked in any health care
40 profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

~~SEC. 26.~~

SEC. 31. Section 3750.6 of the Business and Professions Code, as added by Section 30 18 of Chapter 1275 1274 of the Statutes of 1994, is repealed.

~~SEC. 27.~~

SEC. 32. Section 3751.1 is added to the Business and Professions Code, to read:

3751.1. (a) Notwithstanding the time periods set forth in subdivision (a) of Section 3751, the holder of a conditional or probationary license issued prior to February 1, 2002, on grounds that did not include a violation of subdivision (e), (f), (h), (i), (k), (l), (n), (o), or (p) of Section 3750, a violation of Section 3752.6, or a violation of Section 3755, may submit a petition to terminate probation prior to December 31, 2003.

(b) This section shall be repealed on January 1, 2004, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends that date.

~~SEC. 28.~~

SEC. 33. Section 3753.1 of the Business and Professions Code is amended to read:

3753.1. (a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation.

~~SEC. 29.~~

SEC. 34. Section 3758.6 of the Business and Professions Code is amended to read:

3758.6. (a) In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

~~SEC. 30.~~

SEC. 35. Section 3761 of the Business and Professions Code is amended to read:

3761. (a) No person may represent himself or herself to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

~~SEC. 31.~~

SEC. 36. Section 3766 is added to the Business and Professions Code, to read:

3766. (a) The board may issue a citation containing an order of abatement and civil penalties against a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(b) The board may issue a citation containing an order of abatement and civil penalties against a person employing or contracting with a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

~~SEC. 32.~~

SEC. 37. Section 3767 is added to the Business and Professions Code, to read:

3767. (a) The board shall issue a citation to a person and to his or her employer or contractor, if, upon inspection or investigation, either upon complaint or otherwise, the following conditions are met:

(1) The board has probable cause to believe that the person is acting in the capacity of, or engaging in the practice of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(2) The person is not otherwise exempted from the provisions of this chapter.

(b) Each citation issued pursuant to subdivision (a) shall meet all of the following requirements:

(1) Be in writing and describe with particularity the basis of the citation.

(2) Contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars (\$200) nor more than fifteen thousand dollars (\$15,000).

(c) A person served with a citation may appeal to the board within 15 calendar days after service of the citation with respect to any of the following:

(1) The violations alleged.

(2) The scope of the order of abatement.

(3) The amount of the civil penalty assessed.

(d) If, within 15 calendar days after service of the citation, the person cited fails to notify the board that he or she intends to appeal the citation, the citation shall be deemed a final order of the board and not subject to review by any court or agency. The board may extend the 15-day period for good cause.

(e) (1) If a person cited under this section notifies the board in a timely manner that he or she intends to contest the citation, the board shall afford an opportunity for a hearing.

1 (2) The board shall thereafter issue a decision, based on
2 findings of fact, affirming, modifying, or vacating the citation, or
3 directing other appropriate relief.

4 (f) With the approval of the board, the executive officer shall
5 prescribe procedures for the issuance and appeal of a citation and
6 procedures for a hearing under this section. The board shall adopt
7 regulations covering the assessment of a civil penalty that shall
8 give due consideration to the gravity of the violation, and any
9 history of previous violations.

10 (g) The sanctions authorized under this section shall be
11 separate from and in addition to, any other civil or criminal
12 remedies.

13 ~~SEC. 33.~~

14 *SEC. 38.* Section 3768 is added to the Business and
15 Professions Code, to read:

16 3768. (a) After the exhaustion of the review procedures
17 provided for in Section 3767, and as adopted by regulation, the
18 board may apply to the appropriate superior court for both of the
19 following:

20 (1) A judgment in the amount of the civil penalty.

21 (2) An order compelling the cited person to comply with the
22 order of abatement.

23 (b) The application described in subdivision (a) shall include a
24 certified copy of the final order of the board.

25 (c) The application described in subdivision (a) shall constitute
26 a sufficient showing to warrant the issuance of the judgment and
27 order.

28 (d) The board may employ collection agencies or other
29 methods in order to collect civil penalties.

30 ~~SEC. 34.~~

31 *SEC. 39.* Section 3770 of the Business and Professions Code
32 is amended to read:

33 3770. The department shall keep a record of its proceedings
34 under this chapter, and a register of all persons licensed under it.
35 The register shall show the name of every living licensed
36 respiratory care practitioner, his or her last known place of
37 residence, or address of record, and the date and number of his or
38 her certificate as a respiratory care practitioner. The department
39 shall, once every two years, compile a list of respiratory care
40 practitioners authorized to practice respiratory care in the state.

1 Any interested person is entitled to obtain a copy of that list upon
2 application to the department and payment of an amount as may
3 be fixed by the department, which amount shall not exceed the cost
4 of the list so furnished.

5 ~~SEC. 35.~~

6 *SEC. 40.* Section 3774 of the Business and Professions Code
7 is amended to read:

8 3774. On or before the birthday of a licensed practitioner in
9 every other year, following the initial licensure, the board shall
10 mail to each practitioner licensed under this chapter, at the latest
11 address furnished by the licensed practitioner to the executive
12 officer of the board, a notice stating the amount of the renewal fee
13 and the date on which it is due. The notice shall state that failure
14 to pay the renewal fee on or before the due date and submit
15 evidence of compliance with Sections 3719 and 3773 shall result
16 in expiration of the license.

17 Each license not renewed in accordance with this section shall
18 expire but may within a period of three years thereafter be
19 reinstated upon payment of all accrued and unpaid renewal fees
20 and penalty fees required by this chapter. The board may also
21 require submission of proof of the applicant's qualifications,
22 except that during the three-year period no examination shall be
23 required as a condition for the reinstatement of any expired license
24 that has lapsed solely by reason of nonpayment of the renewal fee.

25 ~~SEC. 36.~~

26 *SEC. 41.* Section 3775.1 of the Business and Professions
27 Code is repealed.

28 ~~SEC. 37.~~

29 *SEC. 42.* Section 3777 of the Business and Professions Code
30 is amended to read:

31 3777. Where an applicant is issued a license to practice
32 respiratory care, and it is later discovered that all required fees
33 have not been paid, the license shall not be renewed or reinstated
34 unless all past and current required fees have been paid.

35 ~~SEC. 38.~~

36 *SEC. 43.* *Section 18602 of the Business and Professions Code*
37 *is amended to read:*

38 18602. Except as provided in this section, there is in the
39 Department of Consumer Affairs the State Athletic Commission,
40 which ~~consists~~ *shall consist* of eight members. Six members shall

1 be appointed by the Governor, one member shall be appointed by
2 the Senate Rules Committee, and one member shall be appointed
3 by the Speaker of the Assembly.

4 The members of the commission appointed by the Governor are
5 subject to confirmation by the Senate pursuant to Section 1322 of
6 the Government Code.

7 No person who is licensed under this chapter as a promoter,
8 manager, or judge may be appointed or reappointed to, or serve on,
9 the commission.

10 Upon the first expiration of the term of a member appointed by
11 the Governor, the commission shall be reduced to seven members.
12 Notwithstanding any provision of law, the term of that member
13 shall not be extended for any reason.

14 This section shall become inoperative on July 1, 2005, and as of
15 January 1, 2006, is repealed, unless a later enacted statute, which
16 becomes operative on or before January 1, 2006, deletes or extends
17 the dates on which it becomes inoperative and is repealed. The
18 repeal of this section renders the commission subject to the review
19 required by Division 1.2 (commencing with Section 473).

20 *SEC. 44. Section 18613 of the Business and Professions Code*
21 *is amended to read:*

22 18613. The commission shall appoint an executive officer and
23 shall fix his or her compensation. The executive officer shall carry
24 out the duties prescribed by this chapter and additional duties as
25 may be delegated by the commission. The commission may
26 employ, in accordance with Section 154, other personnel as may
27 be necessary for the administration of this chapter.

28 This section shall become inoperative on July 1, 2005, and, as
29 of January 1, 2006, is repealed, unless a later enacted statute,
30 which becomes effective on or before January 1, 2006, deletes or
31 extends the dates on which it becomes inoperative and is repealed.

32 *SEC. 45. Section 22253.5 is added to the Business and*
33 *Professions Code, to read:*

34 22253.5. (a) *The Franchise Tax Board shall enforce the*
35 *provisions of this chapter. The board may take the following*
36 *actions:*

37 (1) *Cite individuals preparing tax returns in violation of this*
38 *chapter.*

39 (2) *Levy a fine of up to one thousand dollars (\$1,000) per*
40 *violation.*

1 (3) *Issue a cease and desist order, which shall remain in effect*
2 *until the individual has come into compliance with the provisions*
3 *of this chapter.*

4 (b) *The Franchise Tax Board may accept funds from the*
5 *California Tax Education Council for the purposes of this section.*

6 SEC. 46. Section 123105 of the Health and Safety Code is
7 amended to read:

8 123105. As used in this chapter:

9 (a) “Health care provider” means any of the following:

10 (1) A health facility licensed pursuant to Chapter 2
11 (commencing with Section 1250) of Division 2.

12 (2) A clinic licensed pursuant to Chapter 1 (commencing with
13 Section 1200) of Division 2.

14 (3) A home health agency licensed pursuant to Chapter 8
15 (commencing with Section 1725) of Division 2.

16 (4) A physician and surgeon licensed pursuant to Chapter 5
17 (commencing with Section 2000) of Division 2 of the Business and
18 Professions Code or pursuant to the Osteopathic Act.

19 (5) A podiatrist licensed pursuant to Article 22 (commencing
20 with Section 2460) of Chapter 5 of Division 2 of the Business and
21 Professions Code.

22 (6) A dentist licensed pursuant to Chapter 4 (commencing with
23 Section 1600) of Division 2 of the Business and Professions Code.

24 (7) A psychologist licensed pursuant to Chapter 6.6
25 (commencing with Section 2900) of Division 2 of the Business and
26 Professions Code.

27 (8) An optometrist licensed pursuant to Chapter 7
28 (commencing with Section 3000) of Division 2 of the Business and
29 Professions Code.

30 (9) A chiropractor licensed pursuant to the Chiropractic
31 Initiative Act.

32 (10) A marriage, family, and child counselor licensed pursuant
33 to Chapter 13 (commencing with Section 4980) of Division 2 of
34 the Business and Professions Code.

35 (11) A clinical social worker licensed pursuant to Chapter 14
36 (commencing with Section 4990) of Division 2 of the Business and
37 Professions Code.

38 (12) A physical therapist licensed pursuant to Chapter 5.7
39 (commencing with Section 2600) of Division 2 of the Business and
40 Professions Code.



(b) “Mental health records” means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. “Mental health records” includes, but is not limited to, all alcohol and drug abuse records.

(c) “Patient” means a patient or former patient of a health care provider.

(d) “Patient records” means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. “Patient records” includes only records pertaining to the patient requesting the records or whose representative requests the records. “Patient records” does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. “Patient records” does not include information contained in aggregate form, such as indices, registers, or logs.

(e) “Patient’s representative” or “representative” means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

~~SEC. 39.~~

SEC. 47. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.